



555 West Adams Street
Chicago, IL 60661
Tel 312 466 7730
Fax 312 466 7986
jblenke@transunion.com

John W. Blenke
Executive Vice President
General Counsel

September 17, 2004

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Transunion Comment on FRB's Request for Information
Study on Investigations of Disputed Consumer Information
Docket No. OP- 1209

Dear Ms. Johnson:

This comment letter is submitted on behalf of Transunion LLC ("TransUnion") in response to the captioned matter. Transunion is a Delaware limited liability company with businesses that operate as a "consumer reporting agency" as that term is defined under the Fair Credit Reporting Act ("FCRA"). TransUnion has approximately 4,000 employees with operations on five continents and in 34 countries. Transunion has access to consumer credit information supplied by data furnishers on substantially all of the credit active consumers in the United States.

Section 313(b) of the Fair and Accurate Credit Transactions Act of 2003 (the FACT Act) requires the Board of Governors of the Federal Reserve System ("Board") and the Federal Trade Commission ("FTC") to study the extent to which, and the manner in which, consumer reporting agencies and furnishers of consumer information to consumer reporting agencies are complying with the procedures, timelines, and requirements under the FCRA for the prompt investigation of the disputed accuracy of any consumer information. As noted in the Supplementary Information of the Board's Request for Information in this matter, "the agencies also must study the completeness of the information provided to consumer reporting agencies and the prompt correction or deletion of any inaccurate or incomplete information or information that cannot be verified."

FCRA Background

The United States Congress first became interested in regulating the consumer credit reporting industry in the 1960's. On October 26, 1970 Congress adopted the F C M after focusing on three broad themes: fairness, accuracy and privacy.

When faced with issues relating to accuracy with respect to the FCRA, Congress had the option of adopting a preventive approach or a remedial approach. Through the preventive

method, Congress could have mandated specific rules for the reporting and verification of information. It is clear that Congress did not take this approach. Instead, Congress adopted the remedial approach, in essence relying upon the competitive marketplace to produce a quality product and giving consumers the critical role in maintaining accuracy.

One of the means by which the FCRA has promoted accuracy through consumer interaction is by the requirement that consumer reporting agencies implement a process to investigate and correct errors. Through this process a consumer reporting agency must: disclose to the consumer all information in the consumer's file; provide consumers with free access to their files; accept a consumer's challenge to information in their file and delete any disputed information that cannot be verified within 30 days; and establish reasonable procedures to keep deleted information from reappearing in a consumer's file. In addition, consumer reporting agencies must have trained personnel available to explain to the consumer any information furnished to the consumer and each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis must implement an automated system through which furnishers of information may report the results of a reinvestigation. Again, because Congress did not choose the preventive approach, although an automated system was required to be built, Congress never required that furnishers use the system.

Although the FCRA has put a significant focus on the role of the consumer as being in the best position to know when their credit file is accurate and complete, it also recognized that a consumer has an incentive to portray his/her credit history more favorably in order to obtain credit. Since the FCRA does not have any provision to deter consumers from disputing negative but accurate information with a consumer reporting agency, Congress expected that the consumer reporting agency, with its goal of having the "best file" and thus, the best product relating to that consumer, would act appropriately with respect to disputes. Therefore, the reinvestigation process set forth in the FCRA places the consumer reporting agency as the intermediary between the consumer and the data furnisher, in essence the arbitrator of disputes. This intermediary role, the highly competitive nature of the consumer credit reporting industry, and the consumers moral quandary to question not only "inaccurate" information but all negative information, has caused the consumer reporting industry to incur millions of dollars of costs, incur the scorn of consumers and customers, and be an imperfect process. Nothing less should have been expected when one recognizes that a consumer reporting agency may be furnished with two billion pieces of information each month on approximately 200 million consumers. Therefore, it should not be expected that this process can be significantly improved unless Congress determines it is prudent to move from a remedial approach to a preventive approach.

Dispute Reinvestigation Process

In general, we believe that the implementation of the automated reinvestigation system by TransUnion and the other national consumer reporting agencies' has allowed consumer reinvestigation requests to be processed with greater accuracy and efficiency, benefiting both consumers and the credit reporting system. As the Board has noted in the Supplementary Information, the 1996 amendments to the FCRA and the FACT Act created significant

¹ As required by the 1996 amendments to the FCRA, Section 611(a)(5)(D)

requirements for both consumer reporting agencies and data furnishers, concerning the reporting of accurate information and the reinvestigation of consumer disputes, particularly those in which identity fraud is involved. Therefore, we do not believe that additional legislation or regulation relating to the reinvestigation of disputes pursuant to the FCRA is appropriate at this time, except where such legislation or regulation would improve the inherent limitations of the current consumer credit reporting system, such as requiring data furnishers to report all information (full personal information and positive and negative information in a regular manner) and use standard processes or systems.

Notwithstanding our belief that further refinement of the FCRA is not appropriate at this time, we do believe that there are other legal areas that have a direct affect on the application of the FCRA that should be improved. For example, the continued operation of non-profit entities and professional associations as credit repair organizations (“credit clinics”) is such an area in which additional legislation or regulation would seem appropriate. Credit clinics threaten the integrity of the credit reporting system and defraud consumers. Through a strategy of filing spurious requests for reinvestigation that flood the system these operations distract both consumer reporting agencies and data furnishers from more important and legitimate responsibilities. The FTC’s recent report on consumer fraud in the United States estimated that 2 million Americans purchased fraudulent credit repair services and that this activity was the fifth most frequent form of consumer fraud.² In our concluding comments, we make specific recommendations for legislation amending the Credit Repair Organizations Act³ (“CROA”) to provide additional protections to consumers, data furnishers and the consumer credit reporting industry.

We are pleased to offer the following responses to the specific questions posed by the Board:

Question: What type of entity reports negative and/or positive information to a consumer reporting agency and what type of entity does not report negative and/or positive information to a consumer reporting agency? If an entity does not report information to a consumer reporting agency, why not?

TransUnion Response:

In general, TransUnion has a policy that for an organization to obtain credit reports from TransUnion it must report both positive and negative information about its customers. Financial services providers such as banks, credit unions, and consumer finance companies provide the majority of positive and negative account information in TransUnion’s files. Retailers who maintain their own consumer credit accounts report both positive and negative information. Government agencies report delinquent child support information and, in some cases, both positive and negative student loan information. Non-traditional information providers such as gas and electric utilities and telecommunications companies have begun reporting account information over the past several years. The TransUnion database currently has millions of account records from hundreds of gas and electric utilities and telecommunications companies.

² Consumer Fraud in the United States: An FTC Survey. Federal Trade Commission Staff Report: August 2004

³ Title IV of the Consumer Credit Protection Act (Public Law 90-321, X2 Stat. 164)

Property and casualty insurance providers do not provide information because premium payments are typically made in advance and therefore do not represent an extension of credit.

Managers/owners of residential rental properties have generally not reported rental payment information to the national consumer reporting agencies, such as Transunion. There are many causes for this segment not participating in the national credit reporting system, including: First, there is a large number of landlords (estimated at over 35,000), about a third of which own or manage four or fewer rental units, with a significant number believing that the responsibilities of data furnishers under FCRA Section 623 are just too burdensome. Second, this large population of prospective data furnishers represents significant challenges for any consumer reporting agency seeking to service this segment, in particular, creating appropriate checks and balances to meet the obligations of FCRA Section 607(b). Third, the effect, or predictive value, of this information (in terms of its use in credit scoring models) is unknown—constituting a barrier when set against the significant costs of building a representative national database.

It is important to understand however, that Transunion recognizes the potential value of a database of rental payment information. To this end, on June 3, 2004, we announced our acquisition of Colorado-based RentPort, Inc. We operate RentPort as a separate, standalone legal and business entity, apart from the consumer credit reporting business of Transunion.

Question: When a consumer reporting agency receives notice of consumer disputes and forwards the information to the furnisher, how does the consumer reporting agency provide the furnisher with the notices and relevant information? What information does the consumer reporting agency transmit to the furnisher? Describe any guidelines or procedures, voluntary or otherwise, that apply to this process.

Transunion Response:

Transunion provides dispute notices to data furnishers within 5 business days of receipt of a consumer dispute. The consumer's dispute is communicated to the furnisher by means of an electronic dispute communications platform ("EOscar") via an Automated Consumer Dispute Verification notice ("ACDV"); or by means of a printed Consumer Dispute Verification notice ("CDV") to those furnishers who do not participate in EOscar. Transunion transmits to the data furnisher all information regarding the consumer's account as it appears in our files at the time of the dispute; including the personal identifying information of the consumer and the detailed tradeline reporting fields of information about the account. We provide the data furnisher with a description of the consumer's dispute using a set of industry standard dispute claim codes, e.g., "not my account", "never past due", "account included in bankruptcy", "balance paid in full", etc., based on the relevant information provided to us by the consumer. If we cannot accurately describe the dispute through the use of the codes, TransUnion's personnel is expected to summarize and describe all relevant information relating to the dispute in the "Relevant Data" field included as part of these notices. The data furnisher must verify the information relating to the account in dispute, as well as its current status, and respond to the dispute within the 30-days required by the FCRA. If the data furnisher does not respond in that time frame, the information is deleted. The data furnisher usually responds to the dispute by indicating a response code on the ACDV or CDV. The response codes are: "verified as reported", "change" and "delete". The data furnisher is required to transmit any data fields that

must be changed regarding the account, and EOscar prohibits a data furnisher from providing inconsistent responses (such as a “verified as reported” response and a “change” response for a specific field). In cases where the furnisher responds to delete the account, the account is deleted from the consumer’s file and, if EOscar is used, copies of that deletion are automatically provided to the other national consumer reporting agencies who participate in the EOscar platform.

As noted, both the ACDV and CDV have a free form “Relevant Data” field, in which Transunion may provide any relevant information concerning the consumer’s dispute that was provided by the consumer. Relevant data might include information such as “account opened by ex-spouse after divorce” or other similar types of specific consumer related or account related information that is summarized from the contact Transunion has with the consumer. Note that specific copies of consumer-supplied documentation are typically not supplied to a data furnisher, rather, if the documentation can be reasonably verified as being authentic, the account is automatically updated based on the documentation, in lieu of sending an ACDV or CDV.

As a result of amendments to the FCRA, Transunion intends to require data furnishers to use EOscar to facilitate the required notice to furnishers that their data has been modified as a result of a consumer dispute⁴

Question: How does a consumer reporting agency ensure that furnishers comply with the requirements and timelines established under the FCRA for disputes communicated to a consumer reporting agency’

Transunion Response:

Transunion processes all consumer file disclosure and dispute activity through a custom-designed, proprietary Consumer Relations System (“CRS”). The CRS is designed to meet compliance obligations with respect to the disclosure and dispute requirements of FCRA. Each consumer dispute, including the date of receipt by Transunion, is logged into the CRS, which also keeps a record of when the dispute notice was transmitted to data furnishers. All ACDV and CDV notices are tagged with a “did not respond” date that is set at 28 days from the date the dispute was received by Transunion. As responses are received from data furnishers concerning a consumer’s dispute, the response is recorded in the CRS. The appropriate action is taken to change, delete or mark the account as verified based on the data furnisher’s response. If a response is not received within the 28-day limit, the information in dispute is automatically deleted from the consumer’s credit file. Upon completion of all pending responses or at the 28th day, whichever occurs first, a “corrected report” notification is sent to the consumer as required by Section 611 of the FCRA.

Question: What are the furnisher’s procedures and timelines for investigating the disputes and reviewing the information provided?

Transunion Response:

Transunion does not control the internal procedures of our data furnishers in conducting reinvestigations. In general, furnishers are required to respond to consumer dispute verification

⁴This notice is required by the FCRA Section 611(a)(5)(A), as amended by the FACT Act Section 314(a)

requests within the 30-days specified by FCRA. As stated above, each dispute notification sent to a furnisher has a response date noted on the ACDVICDV. This date is generally 28 days from the dispute date to allow TransUnion to process the response within the 30-day limitation. The EOscar/ACDV electronic platform has edit programs that check for proper response completion. These edits are based upon the claim code and data fields that require response correction. For instance, if a data furnisher indicates a response of "change", the system requires that the furnisher input a change to the data under dispute.

Approximately 86% of the requests for reinvestigations are sent to EOscar participants. The remaining 14% are CDV, paper-based users. In general, data furnishers using EOscar complete their reinvestigation and respond to Transunion more quickly, especially within the first 10 days. This, we believe, is a very favorable result from the use of the automated reinvestigation system. For example, in a July 2004 examination of reinvestigation requests, we had received responses on 54% of the requests to EOscar users, but just 29% of the paper-based users within the first 10 days. By the 19th day, there was no difference between the EOscar and paper systems. Indeed, after the 20th day, the paper response rate exceeds EOscar's. These figures suggest that, when a reinvestigation can be completed promptly, use of EOscar facilitates that action. As more time is required to conduct a reasonable reinvestigation, the differences between use of EOscar and paper diminish and eventually disappear. Transunion receives responses to over 90% of all requests for reinvestigation.

Finally, we note that, in order to comply with the new FACT Act requirement to notify data furnishers when information they submitted is changed or deleted as a result of a reinvestigation, we recently informed all of our data furnishers that we are discontinuing support for paper-based reinvestigations, and will require participation in EOscar.

Question: Is sufficient relevant information provided to the furnisher by the consumer through the consumer reporting agency? Is all relevant information from a consumer provided to the furnisher through the consumer reporting agency? If not, what relevant information is often missing, and why? If relevant information is lacking, how does the furnisher resolve the dispute?

Transunion Response:

Transunion provides all relevant information to data furnishers with respect to consumer disputes. We do this by providing a narrative or summary succinctly describing the information provided or conveyed by the consumer to Transunion. As we have noted, the ACDVICDV contains a separate field for Transunion to convey relevant information to the data furnisher. When a consumer provides specific details of his or her dispute that are relevant, but which cannot be fully conveyed thru the sole use of a dispute claim code, Transunion operators are trained to summarize the detail provided by the consumer and include a text entry in the "Relevant Data" field. TransUnion's experience is that most consumer disputes do not reference or contain any specific information or documentation. Where the consumer supplies verifiable supporting documentation, however, our policy is that there generally is no need to forward that information to the data furnisher, since Transunion promptly updates the consumer's file. For example, a copy of a release of lien or satisfaction of a judgment, that would appear on its face to

⁵FCRA Section 611(a)(5)(A)(ii), as amended by FACT Act Section 314(a)

be authentic, are two types of documents frequently supplied by consumers that lead to a correction of a consumer's file with no ACDV/CVD being sent to the data furnisher.

Question: If the furnisher finds that the information it reported to the consumer reporting agency was incomplete or inaccurate, what steps does the furnisher take? If the furnisher does not find the information reported to the consumer reporting agency to be incomplete or inaccurate, what steps does the furnisher take?

Transunion Response:

In cases where a furnisher finds the reported information was, indeed, inaccurate or incomplete, the furnisher is expected to respond to the ACDV/CDV with the correct information. At Transunion, we correct our file in accordance with the response provided to us by the furnisher. If the furnisher does not find the information in dispute to be inaccurate, they should respond accordingly to the ACDV/CDV that the information was "Verified as reported". The information is not changed on the consumer's file; and the consumer is notified of the outcome as required by FCRA.

Question: Describe any guidelines or procedures that may apply to the treatment of information that continues to be disputed by the consumer after the formal dispute process has been concluded. How often do the furnisher and consumer fail to reach an agreement after the conclusion of the formal dispute process, for example, where the consumer maintains that the disputed information is inaccurate and the furnisher maintains that it is accurate?

Transunion Response:

We identify approximately 5% of disputes as "repeats", that is, we had recently processed the same dispute, and the consumer has provided no new information. In these cases, we may treat the dispute as frivolous and notify the consumer accordingly⁶. We do not treat as "repeats" disputes containing additional information, *or* which are made after a reasonable length of time has passed. Another metric that may illustrate the extent of continuing disputes is the frequency of statements of dispute being added to the file. The FCRA⁷ allows the consumer to file a statement of dispute, which is included in future reports. Our experience is that approximately 4% of all consumer file disclosures result in a statement of dispute being added to the file.

Recommendations: What, if any, legislative or regulatory changes do you recommend besides changes made by the FACT Act and its implementing rules? How would these recommendations improve the system? What benefits or burdens should be considered?

Transunion Response:

In general, as noted above, we believe that the improvements made through the 1996 FCRA amendments, combined with the as-yet unknown impact of the FACT Act's amendments concerning accuracy, reinvestigations, and the processing of consumer disputes by furnishers and resellers, make further statutory or regulatory changes unadvisable at this time. There is one important exception, however, which we offer below.

⁶ As required by the FCRA. Section 611(a)(3)(B)

⁷ FCRA Section 611(b)

Credit Clinics

In the provision creating the duty, under certain conditions, of data furnishers to directly receive disputes from consumers*, Congress acknowledged the threat posed by credit clinics. Disputes generated through credit clinics are specifically excluded, and the regulatory agencies are instructed, in their rulemaking, to consider the impact of possible circumvention by the credit clinics,

TransUnion estimates that between 12% and 20% of all requests for reinvestigations are generated by credit clinics. We estimate that the majority of these are frivolous and may be fraudulent. 'That is, they are made solely with the expectation that the furnisher may fail to reply within the 30-day timeframe, the data furnisher may not be able to locate their record, or there will be some other system failure and the consumer reporting agency will be required to delete the information.' We are greatly concerned that one unintended consequence of the FACT Act's provision for a free annual file disclosure from the national consumer reporting agencies will be the creation of a new business model for the credit clinics, enabling them to defraud even more consumers and to increase the flooding of the system with frivolous disputes.

Expanding the definition of credit clinics to include not-for-profit agencies and professional associations that advertise their credit repair or counseling services is needed. Such an action would enable affected consumers, consumer reporting agencies and data furnishers to have a private right of action to enforce their rights under the CROA. Without this protection there is no effective deterrent for such credit clinics to use discretion when selling their services to consumers or targeting data furnishers or consumer reporting agencies. To protect consumers, data furnishers and consumer reporting agencies, to continue the appropriate balance of the

⁸ FACT Act Section 312(c)

⁹ Sample statements made by an organization that is suspect:

"Any information on your credit report that contains inaccurate, or negative information is noted, and then it will be removed. We are prepared to go directly through the credit reporting agencies to the credit institution who placed the negative item on your report if necessary to remove it. We demand written confirmation of the deletion and a copy is sent to you."

"Let me give you an example."

"Let's say your credit report shows you have late payments on your credit card 3 months in a row back in 2002.

We'll dispute your visa or master card company asking for proof of this. The fact is, either they'll not respond with the right evidence, or not bother with our dispute at all. Then just like that, the 3 months of late payments, according to your credit record, never even happened. By law it has to come off your credit record."

"The same works for loans and everything else."

"You would be amazed at how many times the companies don't even get back to us. Think about it, you've got millions of people you have to keep track of, then you get a letter asking you to prove an event from 2002 about one of your *millions* of customers. Companies don't have time for that and they definitely don't have the staff for it. We know, We've been doing this for 7 years. And even if we don't get it off your record in the first dispute, we'll send another one, and another. It's like releasing a highly trained SWAT team on your creditors."

remedial approach adopted by Congress for the FCRA, and to protect the safety and soundness of the credit reporting system, such an improvement is necessary.

Sincerely,

A handwritten signature in cursive script that reads "John W. Blenke". The signature is written in dark ink and is positioned above the printed name.

John W. Blenke